

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

BRITTANY D. SMITH,
4601 Iris Ct.
Monrovia, MD 21777

Plaintiff

ELECTRONICALLY FILED Mar 25 2020 U.S. DISTRICT COURT Northern District of WV
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v.

Civil Action No. 3:20-CV-55 (Groh)

**DAVID MORRIS FLEMINGS and
PATTERSON'S DRUG STORE, INC.,
a West Virginia Corporation**
134 South Queen St.
Martinsburg, WV 25401

Defendant

COMPLAINT

NOW COMES the Plaintiff, Brittany D. Smith, by her undersigned counsel, and for her Complaint, states as follows:

Parties and Jurisdiction

1. The Plaintiff, Brittany D. Smith, is a resident of Frederick County, Maryland, and at all relevant times, was a pedestrian on a sidewalk in Martinsburg, Berkeley County, West Virginia.
2. Defendant, Patterson's Drug Store, Inc., ("Patterson's") is a West Virginia corporation authorized to do business and conducting business in West Virginia, with its principal place of business at 134 South Queen St., Martinsburg, West Virginia, and, at all relevant times, the owner of a 2017 Toyota Corolla operated by its employee, David Morrison Flemings.
3. Defendant David Morrison Flemings ("Flemings") is a resident of Berkeley County, West Virginia, and at all relevant times, an employee of Defendant Patterson's operating a 2017 Toyota Corolla on behalf of Defendant, within the course and scope of his employment.
4. Jurisdiction is proper in this matter under 28 U.S.C. § 1332 as the parties are completely diverse and the amount in controversy exceeds \$75,000.00.

5. Venue is proper in this court pursuant to 28 U.S.C. § 1391 as the events giving rise to Plaintiff's claims occurred in Martinsburg, Berkeley County, West Virginia.

Common Factual Allegations

6. On April 13, 2018, the Plaintiff was walking west on the sidewalk on the north side of East King Street at a point where the sidewalk traverses the entrance to the BB&T parking lot.

7. At the same time, Defendant Flemings was operating a 2017 Toyota Corolla, on behalf of Defendant Patterson's and within the course and scope of his employment with Defendant Patterson's, traveling east on East King Street.

8. As the Plaintiff continued on the sidewalk, which widened at the entrance to the BB&T parking lot, Defendant Flemings turned left from East King Street in an attempt to enter the BB&T parking lot and struck Plaintiff, who was about halfway across that portion of the sidewalk.

9. The Plaintiff sustained serious and potentially permanent personal bodily injuries in the collision.

10. The collision was investigated by PFC William Parks of the Martinsburg Police Department.

11. The investigating officer noted that Plaintiff was on the sidewalk when she was struck by the vehicle operated by Defendant Flemings.

12. The investigating officer noted that Defendant Flemings' failure to yield the right of way was the contributing cause of the crash; no other contributing causes were indicated in the crash report.

13. The investigating officer did not indicate that any action(s) by Plaintiff caused or contributed to the cause of the collision.

COUNT I

Negligence Against David Morris Flemings

14. The Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 13 as though fully set forth herein verbatim.

15. Defendant Flemings' conduct as set forth herein constitutes negligence in the operation of a motor vehicle including, but not limited to, the following:

- a. Failing to yield the right of way; and
- b. Engaging in inattentive, careless, improper driving;.

16. Defendant Flemings' negligent conduct, as described herein, was a direct and proximate cause of the serious personal bodily injuries sustained by Plaintiff Brittany D. Smith.

17. As a further direct and proximate result of Defendant Flemings' negligent conduct, Plaintiff Brittany D. Smith has suffered, and will continue to suffer, loss of enjoyment of life, aggravation, annoyance, inconvenience, emotional distress, and mental anguish, as well as past and future medical expenses, lost wages, and pain and suffering.

WHEREFORE, Plaintiff Brittany D. Smith demands judgment against Defendant David Morris Flemings for all damages she has sustained as a result of the negligent conduct of said Defendant, together with pre-judgment and post-judgment interest thereon, for all costs and attorney fees incurred in pursuit of this action to which she is entitled by law, and for such other relief as this Court deems proper.

COUNT II

Vicarious Liability Against Patterson's Drug Store, Inc.

18. The Plaintiff incorporates each and every allegation contained in Paragraphs 1 through 17 as though fully set forth herein verbatim.

19. Upon information and belief, Defendant Flemings was, at all relevant times, a paid employee and/or agent of Defendant Patterson's Drug Store, Inc., and was authorized to operate the 2017 Toyota Corolla on its behalf.

20. Defendant Flemings' conduct on behalf of Defendant Patterson's Drug Store, Inc., as set forth herein, constitutes negligence, including, but not limited to, the following:

- a. Failing to yield the right of way; and

b. Engaging in inattentive, careless, improper driving.

21. Defendant Flemings' negligent conduct, as described herein, was a direct and proximate cause of the serious personal bodily injuries sustained by Plaintiff Brittany D. Smith.

22. As a further direct and proximate result of Defendant Flemings' negligent conduct, Plaintiff Brittany D. Smith has suffered, and will continue to suffer, loss of enjoyment of life, aggravation, annoyance, inconvenience, emotional distress, and mental anguish, as well as past and future medical expenses, lost wages, and pain and suffering.

23. Defendant Patterson's Drug Store, Inc., is vicariously liable to Plaintiff Brittany D. Smith for the negligent conduct of its employee and/or agent, Defendant David Morris Flemings.

WHEREFORE, Plaintiff Brittany D. Smith demands judgment against Defendant Patterson's Drug Store, Inc., for all damages she has sustained as a result of the negligent conduct of Defendant David Morris Flemings, for which Defendant Patterson's Drug Store, Inc., is vicariously liable, together with pre-judgment and post-judgment interest thereon; for all costs and attorney fees incurred in pursuit of this action to which they are entitled by law; and for such other relief as the Court deems proper.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

BRITTANY D. SMITH,

By counsel.

/s/ Jeffery L. Robinette
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